DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
MAY 21 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendments of Parts 32, 36, 61,	)	RM-8221
64 and 69 of the Commission's Rules	)	
to Establish and Implement Regulatory	)	
Procedures for Video Dialtone Service	)	

OPPOSITION OF THE AMERITECH OPERATING COMPANIES

Pamela J. Andrews
Attorney for the
Ameritech Operating Companies
Room 4H74
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025
(708) 248-6082

Dated: May 21, 1993

No. of Copies rec'd 0+5
List A B C D E

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
MAY 21 1993
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendments of Parts 32, 36, 61,	)	RM-8221
64 and 69 of the Commission's Rules	)	
to Establish and Implement Regulatory	)	
Procedures for Video Dialtone Service	)	

OPPOSITION OF THE AMERITECH OPERATING COMPANIES

The Ameritech Operating Companies[1] hereby submit this opposition to the Joint Petition for Rulemaking and Request for the Establishment of a Joint Board filed by the Consumer Federation of America ("CFA") and the National Cable Television Association, Inc. ("NCTA").[2] The Companies urge the Commission to promptly dismiss the Joint Petition, which seeks to impede the pro-competitive and pro-consumer objectives of the Commission in its Video Dialtone Order.[3]

---

[1] The Ameritech Operating Companies are: Illinois Bell Telephone Company, Indiana Bell Telephone, Incorporated, Michigan Bell Telephone Company, The Ohio Bell Telephone Company, and Wisconsin Bell, Inc., collectively referred to herein as the "Companies."

[2] Joint Petition for Rulemaking and Request for Establishment of a Joint Board, filed April 8, 1993, by the Consumer Federation of America and the National Cable Television Association, Inc., ("Joint Petition").

[3] Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58,

I. INTRODUCTION AND SUMMARY.

The Joint Petition requests that the Federal Communications Commission ("FCC" or "Commission") institute a rulemaking proceeding to establish specific accounting rules for video dialtone and seeks the establishment of a Joint Board to decide separations issues related to video dialtone. The Video Dialtone Order addressed these issues, and the disposition of those issues should not be reconsidered at this early juncture without compelling evidence of significant regulatory problems.[4] The petitioners have utterly failed in their attempt to manufacture any such evidence. They have simply repackaged arguments repeatedly rejected by the Commission. The Joint Petition does not present a shred of new evidence that would warrant reconsideration of the Commission's decisions in the Video Dialtone Order.

Moreover, the issues raised by CFA/NCTA were reviewed, analyzed, and essentially rejected by the Commission, in the context of an actual Section 214 application, barely two weeks before the filing of the Joint Petition. In the Order and Authorization in the video dialtone application of the Chesapeake and Potomac Telephone Company of Virginia, released March 25, 1993, the FCC considered these issues, and rejected the arguments of petitioners.[5] By ignoring this timely and thorough consideration of the very same issues that are raised in the Joint Petition, the petitioners reveal that their sole purpose is to further delay the implementation of video dialtone. The Joint Petition is simply another ploy by the entrenched cable companies to place additional obstacles before

---

[4] The Joint Petition, in effect, is an out-of-time petition for reconsideration and should be dismissed. See, 47 C.F.R. 1.429(d).

[5] In the Matter of the Application of the Chesapeake and Potomac Telephone Company of Virginia, File No. W-P-C 6834 (released March 25, 1993) ("C&P Application Order").

companies wishing to participate in their currently monopolistic industry, and should be expeditiously and resoundingly dismissed by the Commission.

II. THERE IS NO EVIDENCE TO SUPPORT SUSPENSION OF PENDING SECTION 214 APPLICATIONS OR A MORATORIUM ON NEW SECTION 214 APPLICATIONS.

In the Joint Petition, CFA/NCTA requests that the Commission suspend consideration of the Section 214 applications currently on file, and decline to accept any new Section 214 applications for video dialtone projects.[6] There is absolutely no objective evidence to support this request by CFA/NCTA, and the Commission expressly rejected this proposition in the C&P Application Order.[7] Undaunted by the FCC's consistent rejection of petitioner's arguments in related video dialtone proceedings, petitioners are raising the same issues in the Joint Petition.

The petitioners assert that grant of the pending Section 214 applications ... "[W]ould undermine fair competition in the video marketplace."[8] Nothing could be further from the truth. It is absurd to talk about undermining "fair competition" in the video marketplace when NCTA acknowledges that it represents companies that serve 90% of all cable subscribers in the country.[9] There is no meaningful competition in the video services marketplace. The Commission is attempting to introduce some minimal competition by authorizing LECs to provide video dialtone.

---

[6] Joint Petition at 5.

[7] C&P Application Order at ¶ 14.

[8] Joint Petition at 2.

[9] Id. at n.2.

The Joint Petition is devoid of any evidence to support the position of the petitioners, and their commissioned study entitled, "Cross-Subsidy Concerns Raised by Local Exchange Carrier Provision of Video Dialtone Services," by Hatfield Associates (March 29, 1993) does not further their case. The study and the Joint Petition are replete with misstatements and other factual inaccuracies, many of which are described in these comments. Neither the Joint Petition nor the study contain accurate information that can be relied upon for objective decision-making.

Since the FCC has mandated Section 214 approval as a prerequisite to providing video dialtone, to suggest that the FCC cease consideration of Section 214 applications is a blatantly anti-competitive tactic to keep local exchange companies ("LECs") out of the video marketplace. The Commission's intention as expressed in the Video Dialtone Order is that new video dialtone services should be developed and implemented as quickly as possible.[10] It was clearly the Commission's intention that video dialtone initiatives go forward to facilitate the early achievement of the Commission's overarching goals.[11] Recognizing that there were issues relating to accounting and separations, the Commission made the following determination:

> [W]e intend to reassess the adequacy of our existing safeguards at such time as local telephone companies present us with specific video dialtone proposals in connection with a Section 214 authorization certificate.[12]

The Joint Petition is a subterfuge by CFA/NCTA to forestall competition in the video services market. In fact, the issues raised in the Joint Petition are

---

[10] See, Video Dialtone Order at ¶¶ 105 and 117.

[11] Id.

[12] Id. at ¶ 89.

taken almost verbatim from NCTA's original comments in the video dialtone proceeding and from its petition for reconsideration to the Video Dialtone Order.[13] Acknowledging that other parties argued that substantial changes to existing rules would be necessary and that such changes should be addressed before video dialtone is adopted,[14] the Commission said:

> [W]e ... decline to postpone the adoption of the video dialtone regulatory framework while the Commission or a Commission-sanctioned industry advisory committee considers and resolves all outstanding regulatory, technology, and policy issues. [B]y postponing the prompt implementation of our policy ... the public would be deprived of the numerous benefits ... flowing from video dialtone.[15]

Nothing has happened since the issuance of the Video Dialtone Order to justify reconsideration of this decision by the Commission. In fact, events since the Video Dialtone Order indicate that LECs and others are very interested in accelerating the development of video services, and the concomitant consumer benefits, including improvement in the telecommunications infrastructure. The fact that there are several Section 214 applications pending is clear evidence that the telecommunications industry is eager to deliver to consumers the full benefits of video dialtone. The Commission should encourage prompt implementation of video dialtone, and reject the petitioners' attempt to deny consumers the advantages of robust competition in the provision of video services.

---

[13] See, NCTA Comments, Telephone Company Cable Television Cross-Ownership Rules, Sections 63.54 - 63.58, CC Docket No. 87-266, dated February 3, 1992, at 21-27 and Petition for Reconsideration, Telephone Company Cable Television Cross-Ownership Rules, Sections 63.54 - 63.58, CC Docket No. 87-266, dated October 9, 1992, at 7-9.

[14] Video Dialtone Order at ¶ 115.

[15] Video Dialtone Order at ¶ 117.

III. THE EXISTING REGULATORY FRAMEWORK ENSURES PROPER ACCOUNTING TREATMENT OF VIDEO DIALTONE COSTS AND PROTECTS CONSUMERS.

The existing interrelated regulatory framework minimizes the ability of LECs to engage in anticompetitive conduct.[16] LEC video dialtone offerings are subject to comprehensive regulatory scrutiny at every level -- from developing the initial platform to what is finally delivered to the customer. Significantly, Level 1 video dialtone services must be offered on a common carriage, tariffed nondiscriminatory basis. Other providers of video services -- even those in monopoly markets -- have no obligation to provide any services to competitors or potential competitors. Level II, enhanced services, are subject to the Computer Inquiry III requirements, including the Commission's Part 64 cost allocation rules. Further, in the Video Dialtone Order, the Commission ruled that video dialtone offerings are also subject to Open Network Architecture requirements. All of these requirements and more[17] virtually eliminate the possibility of any improper accounting practices or any anticompetitive behavior by LECs.

Extensive and proven accounting rules minimize the ability of LECs to misallocate costs. The Joint Petition inexplicably asserts that there is no mechanism to identify enhanced video dialtone functions and costs can be misallocated by assigning employees to projects that benefit nonregulated services.[18] This is incorrect and demonstrates a failure to recognize the detailed requirements of the Commission's Joint Cost Rules ("JCR"). All nonregulated services are required to be listed in a carrier's cost allocation manual ("CAM") with all associated investment and expenses allocated in accordance with the

---

[16] Comments of United States Telephone Association to the Joint Petition, n.18.

[17] Id.

[18] Joint Petition at 19 and See also, Appendix A at 4-6.

Commission's rules. There are also explicit time reporting requirements, and compliance with these requirements is subject to extensive audit.[19]

The LECs have utilized these procedures for other enhanced services, and they have served the Commission's objectives well. There is no basis to assert that the existing allocation rules will be violated by LECs or that such rules will not adequately fulfill the regulatory policies of the Commission.

The FCC, in the C&P Application Order, reiterated its conclusion that existing allocation and accounting procedures were adequate.[20] The evaluation by the Commission of this issue in the context of a specific video dialtone service should close this issue until the FCC has credible evidence of improper practices by LECs. The Joint Petition does not identify specific abuses that have occurred which require corrective action, but rather merely speculates as to abuses which may happen in a worst case scenario. The Commission's Video Dialtone Order made it clear that such speculation did not constitute adequate grounds to consider additional safeguards. The FCC noted:

> Finally, in the event specific abuses are identified (emphasis added), we will of course revisit our initial conclusion that our current safeguards are sufficient.[21]

A. There Is No Need To Distinguish Between Broadband And Narrowband Networks.

CFA/NCTA argue that accounting rules must be revised to reflect the network architecture used to deliver broadband services.[22] Loop, trunk, local

---

[19] 47 C.F.R. Section 64.901, Allocation of Costs, 47 C.F.R. Section 64.903, Cost Allocation Manuals, and 47 C.F.R. Section 64.904, Independent Audits.

[20] C&P Application Order at ¶¶ 14 and 15.

[21] See, Video Dialtone Order at n.246.

[22] Joint Petition at 16 and Appendix A at 7, 9, and 12.

switch and tandem switch investments must each be recorded separately and distinctly in the accounting system, in order that the appropriate accounting

TCI and other cable operators would be subject to the same regimen when they roll out their announced plans for voice telecommunications networks.[27]

B. No Changes To Access Charges Or The Price Cap Rules Are Required As A Result of Video Dialtone.

In an attempt to further obfuscate the issues, the petitioners argue that the video dialtone platform would appear to be a form of interstate access service.[28] Consequently, they argue that a separate access charge category should be established for video dialtone.[29] They also argue that video dialtone does not fit any existing price cap baskets, so a new basket must be created.[30]

The Commission addressed similar concerns in its Video Dialtone Order, again raised by NCTA and other cable TV parties, by ruling as follows:

> [W]e do not believe it is necessary at this time to alter our current price caps structure by adding a separate price cap basket for video dialtone service. Given the evolving nature of video dialtone, it is premature to implement any such change.[31]

Again, nothing has changed since this ruling to warrant re-examination of this decision.

The petitioners also argue that basket-by-basket earnings calculations and sharing should be required to prevent upward rate adjustments in other baskets.[32] This suggestion has been rejected in the past and the petitioners offer

---

[27] TCI has announced such a roll out in all of their Chicago metro area systems by the end of 1994. See, Chicago Tribune, April 13, 1993.

[28] Joint Petition at 17.

[29] Joint Petition at 18 and Appendix A at 27.

[30] Id.

[31] Video Dialtone Order at ¶ 91.

[32] Appendix A at 27.

nothing new to justify asking the Commission to revisit its decision that sharing will apply on an overall interstate, rather than a per-basket basis.[33]

C. Current Cost Allocation Procedures Are Adequate.

The petitioners argue that costs associated with enhanced gateways must be kept separate from both telephone service and the basic video dialtone platform and that CAM procedures suffer the same infirmities as the Part 32 cost accounting rules because the CAMs are based on Part 32.[34]

The Joint Petition urges the Commission to make a distinction between video and other enhanced services which it refused to make in the Video Dialtone Order.

> We find that the concerns of potential discriminatory conduct and improper cross-subsidization are similar for common carrier services, whether voice, data, or video.[35]

Moreover, the Commission specifically addressed this issue in the C&P Application Order. In that proceeding, petitioners and others requested that the FCC suspend that proceeding pending development of cost allocation procedures. The FCC rejected this request, noting that the current Part 64 rules require certain allocations, and that C&P's compliance with those rules is subject to Commission and public scrutiny.[36] Accordingly, the Commission already has in place rules that provide oversight and require FCC approval of cost allocations.[37]

---

[33] In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Order on Reconsideration, released April 17, 1991, at ¶ 94.

[34] Joint Petition at 19 and Appendix at 12-13.

[35] Video Dialtone Order at ¶ 90.

[36] C&P Application Order at ¶ 14.

[37] See also, supra at 6.

The petitioners also display a lack of familiarity with the safeguards the Commission has in place for the allocations of nonregulated investment when they argue that the investment from failed video dialtone ventures can be recovered from telephone ratepayers.[38] The reallocation of investment from nonregulated to regulated is expressly prohibited absent a waiver.[39]

D. Joint Marketing Rules Fully Protect Consumers.

With respect to the Customer Proprietary Network Information ("CPNI") and joint marketing rules, the petitioners take exception to the Commission's conclusion in the Video Dialtone Order, that these rules are adequate.[40] They argue that joint marketing of voice services and video dialtone should be limited because it bestows an unfair advantage over every other provider of video facilities or services.[41] The FCC rejected this premise in the Video Dialtone Order:

> We are not persuaded that there is any functional difference between the provision of enhanced services in the context of video dialtone and the provision of enhanced services generally.[42]

A concern is also expressed that telephone companies should not be allowed to gather viewing patterns and market information on individual subscribers to customer/programmers.[43] The Joint Petition does not offer

---

[38] Appendix A at 19.

[39] In the Matter of Separation of Costs of Regulated Telephone Service From Costs of Nonregulated Activities, Order on Further Reconsideration, released November 18, 1988, at ¶¶ 29-31.

[40] Joint Petition at n.44.

[41] Joint Petition at 20-21.

[42] Video Dialtone Order at ¶ 93.

[43] Joint Petition at 22.

concrete evidence in support of its protests. Existing limitations on joint marketing will protect video consumers as they do all other consumers of LEC-provided enhanced services.

IV. CONCLUSION.

The Commission should summarily dismiss the Joint Petition. First, the Commission has repeatedly rejected these arguments, most recently in the C&P Application Order released barely two weeks before the Joint Petition was filed. Second, the petitioners have not presented any new evidence to support an immediate reconsideration of the Commission's recent decisions on these issues. This Joint Petition is yet another attempt by the cable companies to keep potential competitors out of the video services market. In addition to its lack of substantive merit, the Commission should also dismiss the Joint Petition as an out-of-time petition for reconsideration, and deny the request to establish a joint board.

Respectfully submitted,

Pamela J. Andrews

Pamela J. Andrews
Attorney for the
Ameritech Operating Companies
Room 4H74
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025
(708) 248-6082

Dated: May 21, 1993

CERTIFICATE OF SERVICE

I, Jenell Thompson, do hereby certify that copies of the foregoing pleading has been served to all parties listed below by first class mail, postage prepaid, on this 21st day of May, 1993.

By: Jenell Thompson
Jenell Thompson tak

Gene Kimmelman
Consumer Federation of America
Suite 604
1424 16th Street, NW
Washington, DC 20036

Daniel L. Brenner
David L. Nicoll
National Cable Television
Association, Inc.
1724 Massachusetts Ave., NW
Washington, DC 20036

Howard J. Symons
Leslie B. Calandro
Mintz, Levin, Cohn, Ferris
Glovsky and Popeo, P.C.
Suite 900
701 Pennsylvania Ave., NW
Washington, DC 20004